IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 20176 of 2007(B)

PETITIONER:

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1. O.DEVASSY, INCHAKAL, NEDUNGAPRA, PERUMBAVOOR.

2. C.P.MICHAEL, ARANYAVAS, EZHUPUNNA SOUTH P.O., CHERTHALA.

3. K.G.BHASKARAN, IYVARKALA, QUILON.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. THE REGISTRAR CO-OPERATIVE SOCIETIES, TRIVANDRUM.

2. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT, TRIVANDRUM.

3. THE KERALA STATE CO-OPERATIVE HOUSING FEDERATION LTD.NO.4330, KALOOR, KOCHI, REPRESENTED BY ITS MANAGING DIRECTOR.

BY GOVT. PLEADER SRI.ANU SIVARAMAN
ADV.SRI.A.K.CHINNAN, SC FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 20176 OF 2007 B

Dated this the 2nd July, 2007

JUDGMENT

Petitioners have approached this Court seeking for a direction to forbear respondents 1 & 2 from disqualifying them by invoking Rule 46(e) of the Co-operative Societies Rules, to declare that the Societies which the petitioners represent are not defaulters to the third respondent, and to direct the first respondent to consider and pass orders on Exts.P12(a), P12(b) and P12(c) representations in accordance with the directions contained in Ext.P8 Judgment.

2. The case of the petitioners, in brief, is as follows:

They are the Presidents of Primary Co-operative Housing Societies. They are also Directors of third respondent Apex Society as delegates. The matter relates to the applicability of Rule 46(e) of the Kerala Co-operative Societies Rules under which, if the Society of which a person as Director is in default, he ceases to be a Member of the said Committee. Petitioners

have approached this Court earlier as evident from Ext.P8 Judgment. Ext.P8 is a common Judgment in three Writ Petitions. Therein, the learned Single Judge of this Court considered the challenge to the Circular issued by Ext.P4 therein prohibiting periodical rescheduling of house building loans given by Primary Societies to escape from the rigour of Rule 46 (e). Thereafter, the learned Judge did not find any ground to interfere with the same and it was upheld. But, it is followed by certain directions. This Court directed not to disqualify any Member of the Society to send delegate for a period of three months for each Society to give statement of recoveries made and reduction in default during such period. It was further directed that if any Society is able to recover substantial amounts and show trend of recovery in three months, there will be direction to the Government to grant another three months' time to escape from default. Thereafter, it was stated that if any Society continues to be in default after the above period, Rule 46(e) can be applied to disqualify such Society. It was further

directed by the learned Single Judge that though he was upholding Ext.P4, it would be open to the Management of any Primary Society to consider individual cases of loan and grant reasonable incentives for early recovery or for rescheduling of loans without the society becoming a defaulter to the Apex Society. Thereafter, according to the petitioners, the Societies which they represent have taken urgent steps to recover the amounts outstanding and repay the amount to the third respondent Federation. It is also stated that the Societies have also taken up individual cases and have rescheduled the loans only in deserving cases. While this process was going on, the petitioners were served with notices issued by first respondent as to why they should not be disqualified under Rule 46 of the Rules and Clause 12(e) of the Byelaws (Ext.P9). It is stated that Ext.P9 amounts to per se contempt of Ext.P8 Judgment. A detailed reply was given by the petitioners vide Ext.P10. It is their case that in terms of Ext.P8 Judgment, the petitioners have repaid huge amounts to the third respondent. Details are given

in respect of the second petitioner's Society. As far as the first petitioner is concerned, it is stated that the entire amount has been paid. Details are given of payments made by the third petitioner. Stating these details, the petitioners have submitted detailed representations as Exts.P12a), P12(b) and P12(c) before the first respondent requesting him to remove their Societies from the list of defaulter Societies.

3. Heard Shri V.G. Arun, learned counsel for petitioners, Shri A.K. Chinnan, learned counsel for the third respondent Federation, besides Smt. Anu Sivaraman, learned Government Pleader.

4. Petitioners have admittedly approached this Court earlier and obtained a Judgment as Ext.P8. The first respondent is duty bound to act in terms of Ext.P8 and the directions contained therein. According to petitioners, they have made substantial payments also. However, these are all matters for the first respondent to consider in the light of Ext.P8 and in accordance with law. As the petitioners have already addressed

Exts.P12(a), P12(b) and P12(c) before the first respondent giving details of the matter, the first respondent will consider the same in the light of Ext.P8 Judgment. A decision shall be taken in the matter in accordance with law and in the light of the directions contained in Ext.P8 Judgment, within a period of one month from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

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